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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 218 52046 Office: CALIFORNIA SERVICE CENTER Date: MAR 17 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in § 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

8 C.F.R. 204.5(m)(1) states, in pertinent part:

> Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The issue raised by the director is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a pastor from April 26, 1999 until April 26, 2001. The record indicates that the petitioner last entered the United States on May 28, 1991, as a visitor for pleasure and did not depart from the United States. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has worked in the United States without permission. The petitioner stated that the beneficiary previously supported himself by working as grocery store package clerk and as a "valet park" at a car dealership in Dallas, Texas, from 1991 until he began his work with the petitioner in 1999.

The petitioner indicated the beneficiary's duties as:

> [redacted] will be responsible for the spiritual needs of our Ministry and will also assist the Elders of the church in the overall direction and management of the Filipino ministry. His responsibilities are the following: provide spiritual counseling, conduct Bible studies, officiate and lead services of the congregation, visit the sick and the elderly in their

homes, perform community outreach and organize motivational seminars in the community.

In another document, the petitioner specifically delineates the position's duties as: individual prayer; morning devotional prayer; taking phone calls from members of the congregation; individual research and bible study; preparation for daily evening service; and, daily evening service bible study or prayer meeting with the congregation. On Sundays, the beneficiary is in charge of the morning and evening services and counseling sessions with members of the congregation in which he gives "spiritual and religious help and guidance, advice on family problems, and prayers for the sick."

In a letter dated January 2, 2002, the petitioner states that the beneficiary began working for the church in April 1999. The petitioner also states that the church was not fully established in California until February 2000.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, the petitioner indicates that its church has 30 active members with 18 members on average attending the worship services. The petitioner also has submitted a copy of its membership directory indicating 18 family groups.

On appeal, counsel states that the beneficiary is qualified and argues that the Bureau erred in its determination that the beneficiary must be a salaried full-time employee to fulfill the statutory and regulatory requirements. Counsel states that it is clear that the beneficiary worked for the petitioner for the requisite period, and that he worked as a missionary pastor from 1983 to 1997. Counsel is reminded that the beneficiary entered the United States in 1991, and worked as a valet park and store clerk as well as attended a church of the Assembly of God denomination from 1991 to 1997 while in Dallas, Texas. Counsel asserts that beneficiary was compensated for his work during the entire two-year period preceding the filing date of the petition, receiving $800.00 a month as compensation, "love gifts" from the congregation, and housing and accommodation on the church property. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel also cites several decisions issued by the AAO, and states that the instant petition is clearly distinguishable from those cases cited in which lower thresholds were established. Unpublished decisions are not binding in the administration of the Act. See 8 C.F.R. §

103.3(c).

Included in the record is the petitioner's 2000 Internal Revenue Service (IRS) Form 990-EZ, Return of Organization Exempt From Income Tax, signed by the petitioner on December 19, 2001, indicating the beneficiary as an uncompensated employee.

In the attachment to the IRS Form 1023, the petitioner indicated that it was created on March 31, 1999. On this form, in answer to a question regarding the number of hours a week the ministers, pastors, and officers each devote to the church work, and the amount of compensation paid to each, the petitioner responded that that minister/pastor spends 70 to 80 hours a week, and that for this work he is compensated $800.00 a month.

The petitioner also submitted copies of checks drawn on the church's account indicating payments to the beneficiary in 2001 through the filing date as $2,016.21, and $2,000.00 in 1999. No evidence of payments to the beneficiary is included for 2000. It is noted that a payment of $800.00 a month would total $9,600.00 per year.

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The unsupported assertions contained in the record do not adequately establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The record contains insufficient evidence to establish that the beneficiary was paid wages by the petitioning organization throughout the two years immediately preceding the filing date of the petition, nor that the work performed was on other than a volunteer basis. Therefore, the petition must be denied.

Beyond the decision of the director, another issue in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner states that the beneficiary will be receiving a

remuneration of $1,400.00 a month, or $16,800.00 a year. The petitioner also has submitted a "Notice of Action" indicating that the directors of the church authorized this amount of compensation to the beneficiary on January 18, 2001.

Unaudited financial statements submitted for 1999, 2000, and 2001, indicate the petitioner's net year-end balances as $9.74, $737.50, and $488.71, respectively, with a net balance as of November 30, 2001, of $1,235.95. Payments to a pastor for those same years are indicated as $2,488.00, $6,000.00, and $8,800.00. It is unclear from the record, however, to whom those payments were made as the petitioner's 2000 IRS Form 990-EZ, lists the beneficiary as the pastor, but indicates that he receives no compensation for his services, while counsel, in a letter dated January 3, 2002, states that there are no other individuals receiving compensation.

The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For these additional reasons, the petition may not be approved.

Another issue not raised by the director in her decision is that 8 C.F.R. § 204.5(m)(3)(ii) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. A petitioner must establish that the beneficiary is qualified as defined in these proceedings. 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
>
> (B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner stated that the beneficiary was ordained in the Philippines in 1983 and served as a missionary from 1983 until 1991. The beneficiary then became a member of the Harvest Tabernacle (Assemblies of God) Church, in Dallas, Texas, where he performed home bible study, then later served as a deacon, discipleship teacher and associate pastor. The petitioner affirms that the beneficiary is highly qualified for the position of pastor and that the beneficiary possesses over 17 years of experience.

Included in the record is a facsimile of an "Ordination Certificate" dated March 21, 1991, from the Holy Place Church, Davao City, Philippines. Also included in the record is an undated statement from the Head Minister of the church in the Philippines attesting to the beneficiary's ordination and his work as a missionary. The issuance of these documents by a religious organization does not conclusively establish that an alien qualifies as a minister for immigration purposes. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

Also included in the record is a "Certificate of Recognition" dated January 30, 1999, from the Harvest Tabernacle Assembly of God in Dallas, Texas, awarded to the beneficiary for his services for "handling the Discipleship Program for two consecutive years and for being valuable in the spiritual growth of the members of this church" as an assistant associate pastor. It is noted that the affiliation of denomination between the petitioner and the Assembly of God church has not been established.

In IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, the petitioner indicates that the requirements for its ministers (pastors) is to study and be trained for a "minimum of two years under the tutorship of the pastor and to experience missionary works on the field of assignments." IRS Form 1023 indicates that the current deacons, ministers, and or pastor were formally ordained after a prescribed course of study. The petitioner has not submitted any evidence of the beneficiary's compliance with its own requirements for tutorship and a course of study.

The petitioner has not demonstrated that its position of "pastor" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of

activities normally expected of an active member of a religious congregation rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Further, the record fails to reflect that any training obtained by the beneficiary qualifies him to assume the position of "pastor" for the petitioner. The beneficiary has not been shown to be qualified to engage in a religious vocation or occupation. For this additional reason, the petition may not be approved.

Discrepancies encountered in the evidence presented are called into question in the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.